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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/761,322	01/16/2001	Robert F. Gehan	NBI-855A	4644

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EXAMINER

TRAN LIEN, THUY

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 06/18/2003

9

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/761,322

Applicant(s)
Gehen et al.

Examiner
Lien Tran

Art Unit
1761



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (e). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Jan. 13, 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 6) ☐ Other:

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1. The 112 second paragraph rejection of claim 4 is hereby withdrawn.
2. Claims 1-3,5-9 and 11-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Persson in view of Blaschke et al.

Persson discloses a sugar confectionery which has printed picture on the surface. The picture is covered with an opaque coating and the coating is licked off the consumer to reveal the picture. The opaque coating can be chocolate, fondant coating, an opaque boiled sugar coating etc... The picture is made on a wafer and the wafer and toffee may be shaped to resemble a television set and to make it apparent which is the side to be licked in order to disclose the picture. (See pages 1-4)

The Persson product and method differ from the claimed product and method in that the product is a sugar confectionery and not a cookie.

Blaschke et al disclose a ready-for-use cookie dough which is provided with score lines or grooves that define equally sized portions to be broken off and baked to form individual cookie. Each piece of the dough block is stamped on the top with a recognizable design or image such as an animal or geometric shape. (See col. 4 lines 40-45)

It would have been obvious to change the substrate in Persson from a candy to a cookie to obtain a novelty cookie product. Both candies and cookies are commonly consumed by children. Thus, the playful idea of licking to reveal picture taught by Persson will be equally appealing to children when it is applied to a cookie product. It would have been obvious to apply the teaching of Persson to the Blaschke et al cookie to obtain a novelty cookie product which will

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be appealing to children with it playful image revealing. It would also have been obvious to one skilled in the art to form a cookie from two cookie bases adhering to a layer of confection to form cookies having different flavor and taste; this type of sandwiching cookie is well known in the art. Confection cream containing fat and sugar is well known in the art as admitted by applicant in the specification. It would have been obvious to put a layer of confection over the picture as taught by Persson to form a hidden image to appeal to a sense of playfulness while eating to children. It would also have been obvious to put any type of design on the cookie base; this would have been a matter of preference.

3. Claims 4 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Persson in view of Blaschke et al as applied to claims 1-3, 5-9 and 11-13 above, and further in view of Pappas et al.

Persson and Blaschke et al do not teach forming the picture by rotary molding.

It would have been obvious to one skilled in the art to use any known method to make the design on the cookie. It would have been obvious to use rotary molding as taught by Pappas et al to make the picture on cookie because they teach such method is used to make designs on cookie product.

4. Applicant's arguments with respect to claims 1-13 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien Tran whose telephone number is 703-308-1868. The examiner can

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normally be reached on Wed-Fri. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9310.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

June 13, 2003

Lien Tran
LIEN TRAN
PRIMARY EXAMINER
Group 1700